

The McMillan Binch Mendelsohn team of Scott Maidment, Jennifer Dent and Lisa Parliament acted for CropLife Canada.

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## Toronto's anti-pesticide bylaw upheld

By John Jaffey  
Toronto

The Ontario Court of Appeal has upheld the City of Toronto's pesticide bylaw, which bans the use of chemical pesticides on private property. Justice Kathryn Feldman held that Toronto has authority under s. 130 of the *Municipal Act (MA)* to enact the bylaw.

Section 130 states, "A municipality may regulate matters not specifically provided for by this Act or any other Act for purposes related to the health, safety and well-being of the inhabitants of the municipality."

One of the clauses in the preamble to the pesticide bylaw states, "WHEREAS minimizing the use of pesticides will promote the health of the inhabitants of the City of Toronto."

CropLife Canada is an industry association that includes pesticide producers. It challenged the city's authority to enact the bylaw on two grounds. First, it argued, the "specific health power" in the MA has little or no scope because it must be interpreted narrowly. Second, the words "or any other Act" in s. 130 effectively prohibit bylaws on matters that are already the subject of legislation. There are both federal (the *Pest Control Products Act*) and provincial (the *Pesticides Act*) that deal with pesticides. Therefore, the appellant argued, Toronto cannot use s. 130 to enact a bylaw that also regulates the use of pesticides.

Regarding municipal powers, Justice Feldman cited "broader and more flexible enabling statutes for their municipalities" based on the evolution of case law. She



traced this evolution starting with the dissenting opinion of Justice Beverley McLachlin (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231: "Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives ... The elected members of council are discharging a statutory duty. The right to exercise that duty freely and in accordance with the perceived wishes of the people they represent is vital to local democracy. Consequently, courts should be reluctant to interfere."

Ultimately Justice Feldman considered *Spraytech [114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241], which held that a town in Quebec has the power to enact a bylaw regulating the use of pesticides.

Justice Feldman wrote, "L'Heureux-Dubé J. also examined the purpose of the Town of Hudson's pesticide bylaw. She concluded that its purpose was to address the concerns of the town's inhabitants about the health risks arising from the non-essential use of pesticides and to minimize those risks. That purpose fell 'squarely within the health com-

ponent' of the general welfare power."

Justice Feldman concluded that the municipal purpose of the new pesticide bylaw "falls squarely within the authority granted by s. 130" of the MA. She held that the bylaw is not rendered inoperative for conflicting with other laws because it does not frustrate the purposes of the federal PCPA or the Ontario PA.

Justices Stephen Goudge and Susan Lang agreed.

Scott Maidment, Jennifer Dent and Lisa Parliament of McMillan Binch LLP acted for CropLife Canada.

According to Maidment, "The federal government spends \$40 million a year to regulate pesticides, at a very detailed level. Then Toronto's bylaw substitutes the city's own definition of essential use for the federal government's scientific determination of beneficial and efficacious uses. We must be concerned about piecemeal regulations by municipalities that will undermine the federal government's regulated products."

Graham Rempe, Susan Ungar and Mark Siboni, all of City of Toronto Legal Services, acted for Toronto.

Reasons: *CropLife Canada v. Toronto (City)* [2005] O.J. No. 1896.